

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1646, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1       Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2       "SECTION 1. IC 23-2-1-17.5 IS ADDED TO THE INDIANA
- 3       CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4       [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. (a) This section applies**
- 5       **to the following:**
- 6               (1) The secretary of state.
- 7               (2) The securities commissioner.
- 8               (3) A prosecuting attorney.
- 9               (4) The attorney general.
- 10              (5) A designee of a person specified in subdivisions (1) through
- 11              (4).
- 12       **(b) A person specified in subsection (a) shall not take any action**
- 13       **against another person under this chapter solely because a:**
- 14               (1) viatical settlement contract; or
- 15               (2) fractional or pooled interest in a viatical settlement
- 16               contract;
- 17       **that was the subject of a transaction in which the other person was**
- 18       **involved before March 17, 2000, was not registered under this**
- 19       **chapter.**
- 20       **(c) A person specified in subsection (a) shall not take any action**
- 21       **against another person under this chapter solely because the other**

1        **person did not, before March 17, 2000, comply with the:**

2                **(1) registration requirements of this chapter; or**

3                **(2) requirements of this chapter that apply to a person that**  
 4                **offers or sells securities in Indiana;**

5        **if the other person did not, before March 17, 2000, offer or sell**  
 6        **securities other than a viatical settlement contract or a fractional**  
 7        **or pooled interest in a viatical settlement contract.**

8                **(d) A person specified in subsection (a) shall not take any action**  
 9        **against another person under this chapter solely because the other**  
 10       **person did not comply with the registration requirements referred**  
 11       **to in subsections (b) and (c)."**

12        Delete pages 2 through 7.

13        Page 8, delete lines 1 through 31, begin a new paragraph and insert:

14        "SECTION 2. IC 23-2-1-19 IS AMENDED TO READ AS  
 15        FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) A person  
 16        who offers or sells a security in violation of this chapter, and who does  
 17        not sustain the burden of proof that the person did not know and in the  
 18        exercise of reasonable care could not have known of the violation, is  
 19        liable to any other party to the transaction who did not knowingly  
 20        participate in the violation or who did not have, at the time of the  
 21        transaction, knowledge of the violation, who may sue either at law or  
 22        in equity to rescind the transaction or to recover the consideration paid,  
 23        together, in either case, with interest as computed in subsection (g)(1),  
 24        plus costs, and reasonable attorney's fees, less the amount of any cash  
 25        or other property received on the security upon the tender of the  
 26        security by the person bringing the action or for damages if the person  
 27        no longer owns the security. Damages are the amount that would be  
 28        recoverable upon a tender less:

29                (1) the value of the security when the buyer disposed of the  
 30                security; and

31                (2) the interest as computed in subsection (g)(1) on the value of  
 32                the security from the date of disposition.

33                (b) A person who purchases a security in violation of this chapter,  
 34        and who does not sustain the burden of proof that the person did not  
 35        know and in the exercise of reasonable care could not have known of  
 36        the violation, is liable to any other party to the transaction who did not  
 37        knowingly participate in the violation or who did not have, at the time  
 38        of the transaction, knowledge of the violation. The other party to the

1 transaction may bring an action to rescind the transaction or for  
2 damages, together, in either case, with reasonable attorney's fees, upon  
3 the tender of the consideration received by the person bringing the  
4 action.

5 (c) A person who, for compensation, engages in the business of  
6 advising others, either directly or through publications or writings, as  
7 to the value of securities or as to the advisability of investing in,  
8 purchasing, or selling securities, or who, for compensation and as a part  
9 of a regular business, issues analyses or reports concerning securities  
10 and:

11 (1) violates section 8, 12.1(b), 14, or 26 of this chapter;

12 (2) employs a device, scheme, or artifice to defraud a person; or

13 (3) engages in an act that operates or would operate as fraud or  
14 deceit upon a person;

15 is liable to the other person, who may bring an action to recover any  
16 consideration paid for advice, any loss due to advice, interest at eight  
17 percent (8%) each year from the date consideration was paid, costs, and  
18 reasonable attorney's fees less the value of cash or property received  
19 due to the advice. It is a defense to an action brought for a violation of  
20 section 12.1(b) or 26 of this chapter that the person accused of the  
21 violation did not know of the violation and, exercising reasonable care,  
22 could not have known of the violation.

23 (d) A person who directly or indirectly controls a person liable under  
24 subsection (a), (b), or (c), a partner, officer, or director of the person,  
25 a person occupying a similar status or performing similar functions, an  
26 employee of a person who materially aids in the conduct creating the  
27 liability, and a broker-dealer or agent who materially aids in the  
28 conduct are also liable jointly and severally with and to the same extent  
29 as the person, unless the person who is liable sustains the burden of  
30 proof that the person did not know, and in the exercise of reasonable  
31 care could not have known, of the existence of the facts by reason of  
32 which the liability is alleged to exist. There is contribution as in cases  
33 of contract among the several persons liable.

34 (e) A tender specified in this section may be made at any time before  
35 entry of judgment.

36 (f) A cause of action under this statute survives the death of a person  
37 who might have been a plaintiff or defendant.

38 (g) Action under this section shall be commenced within three (3)

years after discovery by **a governmental entity or** the person bringing the action of a violation of this chapter, and not afterwards. No person may sue under this section:

(1) if that person received a written offer, before suit and at a time when the person owned the security, to refund the consideration paid together with interest on that amount from the date of payment to the date of repayment, with interest on:

(A) interest-bearing obligations to be computed at the same rate as provided on the security; and

(B) all other securities at the rate of eight percent (8%) per year;

less the amount of any income received on the security, and the person failed to accept the offer within thirty (30) days of its receipt; or

(2) if the person received an offer before suit and at a time when the person did not own the security, unless the person rejected the offer in writing within thirty (30) days of its receipt.

(h) No person who has made or engaged in the performance of a contract in violation of this chapter or a rule or order under this chapter, or who has acquired a purported right under a contract with knowledge of the facts by reason of which its making or performance was in violation, may base a suit on the contract.

(i) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity."

Page 9, delete lines 3 through 12.

Page 9, delete lines 25 through 33, begin a new paragraph and insert:

"SECTION 9. IC 27-8-19.8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of a portion of the death benefit or ownership of a life insurance policy or contract **that insures the life of an insured** for consideration that is less than the expected death benefit of the life insurance policy or contract. The term does not include the following:

- 1 (1) A loan by an insurer under the terms of a life insurance policy,  
2 including a loan secured by the cash value of a policy.
- 3 (2) An agreement with a bank, savings bank, savings and loan  
4 association, credit union, or other licensed lending institution that  
5 takes an assignment of a life insurance policy as collateral for a  
6 loan.
- 7 (3) The provision of accelerated death benefits by an insurer to an  
8 insured under the provisions of a life insurance contract.
- 9 (4) Agreements between an insurer and a reinsurer.
- 10 (5) An agreement by a person who enters into not more than one  
11 (1) such agreement in any five (5) year period to purchase a life  
12 insurance policy or contract for the transfer of a life insurance  
13 policy for a value that is less than the expected death benefit."
- 14 Page 11, line 11, delete "viatical settlement provider".
- 15 Page 13, line 30, after "**department**;" insert "**and**".
- 16 Page 13, line 31, delete "; and" and insert ".".
- 17 Page 13, delete lines 32 through 38.
- 18 Page 14, delete lines 9 through 31.
- 19 Page 15, line 22, delete "," and insert "**or**".
- 20 Page 15, line 23, delete ", or viatical representative;" and insert ";".
- 21 Page 16, line 8, delete "If the insured has a catastrophic or life  
22 threatening".
- 23 Page 16, line 9, delete "illness or condition, acknowledges" and  
24 insert "Acknowledges".

- 1 Page 16, after line 37, begin a new paragraph and insert:
- 2 "SECTION 24. **An emergency is declared for this act.**".
- 3 Renumber all SECTIONS consecutively.  
(Reference is to HB 1646 as reprinted February 18, 2005.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 8, Nays 0.

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**Paul**

**Chairperson**